

*United States Court of Appeals  
for the Second Circuit*



**APPELLANT'S  
APPENDIX**



76-7523

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

- - - - - X

RUTH RADOW and SEYMOUR RADOW,

Plaintiffs, Appellants,

-against-

MESSERS. GRENITO, PETERSON, TRAPANI,  
WALKER, ROSE, YACHNIN and WEXNER,  
Constituting the Board of Zoning  
Appeals of the Town of Hempstead,  
State of New York, and THE FOURTH  
OCEAN PUTNAM CORPORATION, and THE  
TOWN OF HEMPSTEAD,

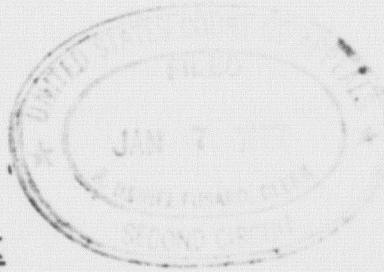
APPEAL FROM  
UNITED STATES  
DISTRICT COURT  
FOR THE EASTERN  
DISTRICT OF NEW  
YORK - DOCKET  
NO. 76-7523

B

Defendants, Appellees.

- - - - - X

APPENDIX



RUTH RADOW and SEYMOUR RADOW  
Pro, Se  
50 Tioga Avenue  
Atlantic Beach, N.Y. 11509

PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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RUTH RADOW and SEYMOUR RADOW,

Plaintiffs, Appellants,

-against-

MESSERS. GRENITO, PETERSON, TRAPANI,  
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Constituting the Board of Zoning  
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APPENDIX

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DATE	NR.	PROCEEDINGS	
4-28-75		Complaint filed. Summons issued.	(1)
4-30-75		By WEINSTEIN, J.-Order dtd 4-29-75 referring the case to the Magistrate filed. Copy sent to Magis.	(2)
5/10/75		Summons ret'd and filed. Executed.	(3)
5/22/75		By WEINSTEIN, J.- Order dated 5/22/75 filed that the hearing to dismiss the complaint is set for 6/24/75 (on Letter from W. Chave to Mr. Ettinger dated 5/21/75).	(4)
5/30/75		<u>Notice of Motion, ret. June 24, 1975 filed re: to dismiss the case</u>	(5)
5/30/75		Letter dated 5/28/75 filed from M. Ricigliano to J. Weinstein	(6)
5/30/75		By WEINSTEIN, J.- Order dated 5/29/75 filed that the date for the motion to dismiss is 6/24/75 (On Doc. #6)	
6-5-75		By WEINSTEIN, J.-Order dtd 6-4-75 that defts motion to dismiss will be heard on June 24, 1975 etc filed. Clerk to notify parties. See bottom of document number 5.	
6-11-75		Letter dtd 6-10-75 to J. Weinstein from W. Kenneth Chave Jr. filed.	(7)
6-11-75		Motion to dismiss for lack of jurisdiction ret 6-24-75 filed with Memorandum of Law.	(8)
6-23-75		Letter dtd 6-20-75 to J. Weinstein from David M. Ettinger filed.	(9)
6-23-75		By WEINSTEIN, J.=Order dtd 6-20-75 adjourning matter to 8-7-75 at Westbury Courthouse filed. See bottom of document #9.	
6-24-75		Before WEINSTEIN, J.-Case called, and adj'd to 6-27-75.	
6-26-75		By WEINSTEIN, J.-Order to Show Cause ret 6-27-75 why an order should not be entered dismissing the complaint on the grounds that the Court lacks jurisdiction etc filed.	(10)
7/1/75		Before WEINSTEIN, J.- Case called- Order to show cause argued decision reserved- courts findings read into record	(xx)
6/27/75		Affirmation in opposition to motion to dismiss filed	(11)
7-1-75		Letter from Jeffrey L. Stadler dtd 6-27-75 filed.	(12)
3-16-76		By WEINSTEIN, J.--Order dtd 3-10-76 setting status conference for 5-12-76 filed.	(13)
3-26-76		Letter dtd/ 3-19-76 from David Ettinger to Judge Weinstein discharging of counsel for pltff filed.	(14)
5-12-76		Before WEINSTEIN, J.- Case called for status conf Conf held and concluded Deft motion for summary judgment to be made ret.	
6-2-76			
5/24/76		<u>Notice of Motion, ret. 6/2/76 at 9:30 A.M., filed re: to dismiss, etc.</u>	(15)
6-2-76		Before WEINSTEIN, J.- Case called for defts motion for summary judgment and adj'd to 9-28-76	
6-4-76		Sten. transcript dtd. 6-2-76 filed.	(16)
7-14-76		Sten. transcript dtd 5-12-76 filed.	(17)
9-28-76		Pltff's motion for assignment of counsel filed.	(18)
9-23-76		By WEINSTEIN, J.- Memo and order dtd. 9-21-76 denying pltff's motion for assigned counsel filed. copies mailed.	(19)
9-28-76		Before WEINSTEIN, J.- Case called for summary judgment. Motion argued and granted as to all defts, Case closed. Order to be submitted within 48 hours.	
9-30-76		#28#26#2x2zketzezxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzxzx By WEINSTEIN, J.-ORDER granting motion for summary judgment dtd 9-30-76 dismissing the action w/o costs. mg	(20)
10-5-76		Setnographer's transcript dtd 9-28-76 filed.	(21)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
RUTH RADOW and SEYMOUR RADOW  
PLAINTIFFS

against  
MESSRS. GRANTING PETERSON, TRAANI, WALKER, RUE  
YACHTING AND WEINSTEIN CONSTITUTING THE BOARD OF  
ZONING APPEALS OF THE TOWN OF HEMPSTEAD, STATE OF  
NEW YORK and THE FOURTH OCTAVIUS PUTNAM CORP., ONE  
TWO TOWN OF HEMPSTEAD, NEW YORK

CERTIFIED COPY OF DOCKET ENTRIES

75 C 638

R-C

COMPLAINT FILED, SUMMONS ISSUED

COPY SENT TO MAGISTRATE

SUMMONS RETURNED AND FILED, EXECUTED

HEARING SET TO DISMISS COMPLAINT

NOTICE TO DISMISS CASE 6/24/75 FILED

LETTER FROM M. RICIGLIO TO J. WEINSTEIN  
DATE FOR MOTION TO DISMISS  
DEFENDANTS MOTION TO DISMISS SET.

LETTER TO J. WEINSTEIN FROM K. CHAUVRIR

MOTION TO DISMISS FOR LACK OF JURISDICTION

LETTER TO J. WEINSTEIN FROM ETTINGER  
ORDER BY J. WEINSTEIN REGARDING MATTER  
TO 6-7-75

CASE CALLED AND ADJOURNED  
ORDER TO SHOW CAUSE RETURNED  
SHOW CAUSE ORDER ARGUED - DEC. RESERVED

AFFIRMATION IN OPPOSITION TO MOTION TO DISMISS

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ORDER FOR STATUS CONFERENCE

LETTER FROM ETTINGER TO WEINSTEIN  
DISCHARGING OF COUNSEL

NOTICE OF MOTION TO DISMISS

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PLIFFS. MOTION FOR ASSIGNMENT OF COUNSEL

ORDER DENYING PLAIFFS. MOTION FOR COUNSEL

SUMMARY JUDGEMENT MOTION ARGUED AND GRANTED  
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MOTION GRANTED FOR SUMMARY JUDGEMENT

STENOGRAPHER'S TRANSCRIPTS

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CIVIL APPEAL SCHEDULING ORDER

EXHIBITS

PLAINTIFF'S EXHIBITS

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N.Y. TIMES AD FOR SALE OF PROPERTY

N.Y. TIMES EDITORIAL E: FLOOD INSURANCE

BOOK - TIDAL FLOOD PLAIN INFORMATION

ARMY CORPS OF ENGINEERS STUDY - BEACH EROSION

HURRICANE  
MINUTES - TOWN OF HEMPSTEAD - CAPRI ESTATES REZONING

COUNTY EXECUTIVE LETTER TO MAYOR BEAMER

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BUILDING PERMIT APPLICATION

MINUTES OF BOARD OF ZONING APPEALS

ZONING MAPS

~~HARSTEAD~~ 173-186-187 - RES 10-A

MODEL ZONE ORDINANCE

~~HARSTEAD~~ SUPPLEMENT TO COUNTY GOVT LAW

NEWSPAPER ARTICLE RE: HURRICANES OIL I.

NEWSPAPER ARTICLE RE: FLOOD INSURANCE

OPINION AND DECISION U.S. SUPREME COURT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

---

RUTH RADOW and SEYMOUR RADOW,

: NO.

Plaintiffs

: COMPLAINT FOR DECLARATOR  
AND INJUNCTIVE RELIEF.

-against-

MESSRS, GRENITO, PETERSON, TRAPANI,  
WALKER, ROSE, YACHNIN, and WEXNER, :  
Constituting the Board of Zoning  
appeals of the Town of Hempstead, :  
State of New York and THE FOURTH  
OCEAN PUTNAM CORPORATION, and THE TOWN:  
OF HEMPSTEAD.

Defendants :

---

DAVID M. ETTINGER, ESQ.,  
Attorney for Plaintiffs  
Office and P.O. Address  
10 East 40th Street  
New York, New York 10016

(212) 532-2225

I. JURISDICTION

1. A jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1331 (a), 1343 and 2201, et seq., this suit being authorized by Title 42 United States Code, Section 1983. This is an action for a declaratory judgment and appropriate equitable relief to prevent further deprivation under color of state law, statute, or ordinance, of rights, privileges and immunities secured to plaintiffs by the Constitution and Statutes of the United States, including the right to equal protection and due process of law under the Fourteenth Amendment to the Constitution of the United States and under Title 42, United States Code, Section 1983.

II. PARTIES PLAINTIFF

2. RUTH RADOW, is a resident of the Incorporated Village of Atlantic Beach, in the Town of Hempstead, Nassau County, State of New York , residing at 50 Tioga Avenue, Atlantic Beach, New York.

3. SEYMOUR RADOW, is a resident of the Incorporated Village of Atlantic Beach, ir the Town of Hempstead, Nassau County, State of New York, residing at 50 Tioga Avenue, Atlantic Beach, New York.

4. That plaintiffs, RUTH RADOW and SEYMOUR RADOW are husband and wife, and as more fully set forth herein, they are the owners of a single family residence within the Incorporated

TA510175A  
JLS/J

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

RUTH RADOW and SEYMOUR RADOW,

Plaintiffs,

- against -

AFFIRMATION

Civil Index No.  
75C638.

MESSERS. GRENITO, PETERSON, TRAPANI,  
WALKER, ROSE, YACHNIN and WEXNER,  
Constituting the Board of Zoning  
Appeals of the Town of Hempstead,  
State of New York, and THE FOURTH  
OCEAN PUTNAM CORPORATION, and THE  
TOWN OF HEMPSTEAD,

Defendants.

STATE OF NEW YORK)  
}ss.  
COUNTY OF MASTAUS)

JEFFREY L. STADLER, being duly sworn, deposes and says  
that he is an attorney duly licensed to practice in the Courts  
of the State of New York and makes this affirmation under penalty  
of perjury.

That I am a Deputy Town Attorney in the Office of W.  
Kenneth Chave, Jr., Esq., Town Attorney and attorney for the  
defendants, Messers. Grenito, Peterson, Trapani, Walker, Rose,  
Yachnin and Wexner, constituting the Board of Zoning Appeals of  
the Town of Hempstead, State of New York, and the Town of Hemp-  
stead; that I am duly licensed to practice law in the State of  
New York and am a member of the Bar of the United States District  
Court, Eastern District, New York.

I am fully familiar with all of the facts and circumstances of the present action.

That this affirmation is submitted in support of the motion of the stated defendants to dismiss the complaint.

At a status conference before Judge Weinstein on May 12, 1976, plaintiff set forth allegations of a Federal question involved in this action under the National Flood Insurance Program (Chapter 50, Title 42, National Flood Insurance Act).

Your affiant respectfully refers this Court to the affidavit of William L. Williams, Deputy Commissioner of the Department of Buildings of the Town of Hempstead, duly verified the 21 day of May, 1976, and the opinion of Justice Joseph A. Suozzi, in New York State Supreme Court, Nassau County, Special Term, Part I, dated November 20, 1975.

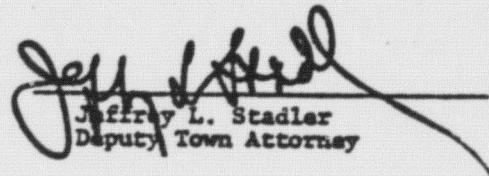
Your affiant respectfully submits that the present action is identical to a certain Article 78 proceeding in the New York State Court system. Opinions in the case have been rendered by Justice Suozzi, dated November 20, 1975 and March 24, 1976. Judgment has not yet been entered and it is the intention of the Town of Hempstead to appeal to the Appellate Division of the Supreme Court, Second Judicial Department, from so much of the forthcoming judgment that shall annul and set aside a certain variance and special exception permit approved by the Board of Zoning Appeals of the Town of Hempstead.

Your affiant respectfully submits that all of the issues raised in this Court have been considered by the New York

State Supreme Court and the plaintiffs will have further opportunity to present their arguments upon the appeal of the forthcoming New York State Supreme Court judgment.

WHEREFORE, your affirment respectfully requests that summary judgment be granted the defendants, Messers. Grenito, Peterson, Trapani, Walker, Rose, Yachnin and Wexner, constituting the Board of Zoning Appeals of the Town of Hempstead, State of New York, and the Town of Hempstead, in the subject action.

Dated: Hempstead, New York.  
May 21, 1976.

  
Jeffrey L. Stadler  
Deputy Town Attorney

4010175A  
JLS/j

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

RUTH RADOW and SEYMOUR RADOW,

Plaintiffs,

- against -

AFFIDAVIT

MESSERS. GRENITO, PETERSON, TRAPANI,  
WALKER, ROSE, YACHNIN and WEINER,  
Constituting the Board of Zoning  
Appeals of the Town of Hempstead,  
State of New York, and THE FOURTH  
OCEAN PUTNAM CORPORATION, and THE  
TOWN OF HEMPSTEAD,

Civil Index No.  
76C638.

Defendants.

WILLIAM L. WILLIAMS, being duly sworn, deposes and  
says:

That I am the Deputy Commissioner of the Department of  
Buildings of the Town of Hempstead and I have held said position  
since January 8, 1974.

That, prior to my occupying said position, I was the  
Superintendent of the Building Department of the Incorporated  
Village of Rockville Centre, for a period of 20 years.

That this affidavit is submitted on behalf of the motion  
of the Town of Hempstead for summary judgment dismissing the  
complaint of the plaintiffs and shall deal only with the question  
raised in the complaint of the National Flood Insurance Program  
as same pertains to the Town of Hempstead. Counsel has advised  
me that at a status conference held before Judge Weinstein of

this Court on May 12, 1976, this question was raised before the Court.

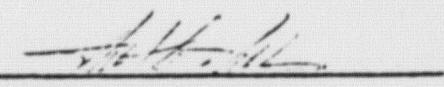
The Town of Hempstead became part of the National Flood Insurance Program on September 10, 1971, when at such time this community was approved to enter said program. In accordance therewith, it is the Town's duty to adopt adequate land use and control measures consistent with Federal criteria, and the Department of Buildings is the enforcement agency for the Town of Hempstead in this regard.

It should be initially noted that Federal legislation under Section 42 of the United States Code does not prohibit construction in flood plain areas. There is a requirement that all construction be of such a kind and of such elevation that would minimize or prevent flood damage. Building permit applications are reviewed by this Department to determine compliance with existing State and local codes and ordinances and, in addition, regulations of the Department of Housing and Urban Development, under Title 24, Chapter 10, subchapter B entitled, "National Flood Insurance Program", set forth the required land use and control measures for flood-prone areas.

Section 1910.3 thereof sets forth the regulations under different circumstances depending upon whether or not the Federal Insurance Administrator has or has not defined or identified flood plain areas. In all cases, building permit applications must be reviewed and any desired new construction must meet the Federal criteria, depending upon the area identification.

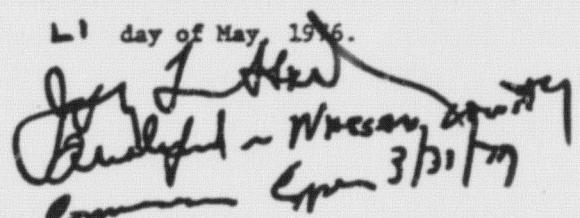
I conclude from a reading of the regulations that the Federal legislation does not prohibit construction in any flood-prone area, although it regulates construction.

A copy of Section 1910.3 of Title 24, Chapter 10, sub-chapter B, is annexed hereto.

  
William L. Williams  
Deputy Commissioner  
Department of Buildings

Sworn to before me this

1<sup>st</sup> day of May, 1976.

  
J. H. Hart  
Chancery - Worcester County  
Commr. 3/31/77

## MEMORANDUM

JLS  
10/15

SUPREN / COURT. HANSAU COUNTY SPECIAL TERM PART I (4/4/75- Mot. No. 43)  
 In the Matter of the Application of  
 MICHAEL BRADY,  
 Petitioner,  
 Vs.  
 MESSRS. GREMTO, PETERSON, TRAPANI,  
 WALKER, ROSE, YACHIN and WEGNER  
 Constituting the Board of Zoning  
 Appeals for the Town of Hempstead,  
 State of New York; and FOURTH  
 OCEAN PUTNAM CORPORATION,  
 Respondents.

BY SUOZZI, J.

DATED November 20, 1975

Index No. 3459/75

DAVID M. ETTINGER, Esq.  
 Attorney for Petitioner  
 10 East 40th Street  
 New York, New York 10006

W. KENNETH CHAVE, JR., Esq.  
 Town Attorney  
 Attorney for Resp. Board of Zoning Appeals  
 Town Hall  
 Hempstead, New York 11550

MARCIOTTA, LEVITT & RICCIOLANO  
 Attorneys for Resp. Fourth Ocean  
 955 Front Street  
 Uniondale, New York

S. ROBERT PUTTERMAN, Esq.  
 Attorney for Village of Atlantic Beach  
 (Amicus Curiae)  
 65 The Plaza  
 Atlantic Beach, New York 11509

This is an Article 78 proceeding to annul the determination of the Board of Zoning Appeals of the Town of Hempstead, which granted to the applicant, Fourth Ocean Putnam Corp., the following:

1. A "special exception" for a transient hotel (Case 245).
2. An "extension of business use" to a depth of 45 feet on a portion of the property zoned Residential "B" in conjunction with the proposed hotel and bath club (Case 244).
3. A "special exception" for a bath club (Case 247).
4. A "special exception" for a swimming pool as an accessory use to the hotel and bath club (Case 246).

The application in Case 246 to park partially on the front set-back area was denied, and therefore is not before this Court for review.

This proceeding followed the Board's decision favorable to Fourth Ocean after it had, pursuant to public notice, conducted several hearings at which both the applicant and objectors were heard and given the opportunity to present expert testimony and documentary proof, and after the applicant had modified its plans for the hotel to meet some of the objections made at the public hearings.

does not deem this objection well taken, and the Board properly refused to consider this argument as a basis for not granting the "special exception".

As to the National Flood Insurance Program ("Program"), it is clear that the responsibility for compliance with the requirements of this Program lies with the legislative arm of the participating municipality. The Board of Zoning Appeals merely applies the Ordinance as it finds it. In addition, the contention that the Program precludes any construction in the designated flood plain area is contrary to the provisions of the Act itself and to the letters submitted by the objectors from various federal agencies. See 42 U.S.C.A. §§ 4022 and 4102; and Exhibit P-6 submitted at the Board hearing.

The Regulations of the U. S. Department of Housing and Urban Development (HUD) require municipalities in the Program, with existing building codes, to certify that building permits must first be obtained before construction is commenced. In addition, the municipality must have an official who reviews building permit applications to determine if appropriate flood hazard construction techniques and materials are utilized for new construction in flood plain areas. See Federal Insurance Administration Regulations, Part 1909, Subpart B- Eligibility Requirements, 36 F.R. 24759, Dec. 22, 1971. In granting a "special exception" permit, the Board of Zoning Appeals does not pass on specific questions of construction. The proper agency for that is the Building Department, with its trained and expert personnel.

The objection that the Town will become ineligible to participate in the Program because of any action by the Board of Zoning Appeals is misplaced. Eligibility depends on legislative enactment of standards for land use and flood hazard construction in accordance with Chapter 50 of Title 42, U.S.C.A. (National Flood Insurance Act). The Town Board is the only body with power to legislate those standards. That Board in its legislative capacity is not subject to judicial review other than for constitutionality, not involved here.

Accordingly, the objection that the Board of Zoning Appeals failed to consider the impact of the National Flood Insurance Program is dismissed.

A410175A  
JLS/j

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

x

RUTH RADOW and SEYMOUR RADOW,

Plaintiffs,

- against -

MOTION FOR  
SUMMARY JUDGMENT.

MESSERS. GLENITO, PETERSON, TRAPANI,  
WALKER, ROSE, YACHMIN and WEINER,  
Constituting the Board of Zoning  
Appeals of the Town of Hempstead,  
State of New York, and THE FOURTH  
OCEAN PUTNAM CORPORATION, and THE  
TOWN OF HEMPSTEAD,

Civil Index  
#75C638.

Defendants.

x

Defendants, Messers. Granito, Peterson, Trapani, Walker,  
Rose, Yachmin and Weiner, constituting the Board of Zoning Appeals  
of the Town of Hempstead, State of New York, and the Town of  
Hempstead, upon the annexed affidavit of William L. Williams,  
Deputy Commissioner of the Department of Buildings of the Town  
of Hempstead, duly verified the 21 day of May, 1976; the  
annexed affirmation of Jeffrey L. Stadler, Esq., Deputy Town  
Attorney of the Town of Hempstead, dated May 21, 1976; and the  
annexed opinion of Justice Joseph A. Suozzi of the Supreme Court  
of the State of New York, at Special Term, Part I, Nassau County,  
dated November 20, 1975, will move this Court at a stated term  
for the hearing of motions to be held at the United States Court  
House, 225 Cadman Plaza East, in Courtroom 10 located on the  
Sixth Floor, Brooklyn, New York, on the 2nd day of June, 1976,  
at 9:30 o'clock in the forenoon of that day or as soon thereafter  
as counsel can be heard, to enter, pursuant to Rule 56 of the

Federal Rules of Civil Procedure, a summary judgment in the defendants' favor, dismissing the action on the ground that there is no genuine issue as to any material fact, there is no Federal question and that the defendants are entitled to a judgment as a matter of law.

W. KENNETH CHAVE, JR.  
Town Attorney and  
Attorney for Defendants  
Hempstead Town Hall  
Town Hall Plaza  
Main Street  
Hempstead, New York 11550  
(516) 489-5000

UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF NEW YORK

-----X

RUTH RADOW and SEYMOUR RADOW,

Plaintiffs,

ORDER GRANTING  
MOTION FOR  
SUMMARY JUDGMENT

- against -

Civil Index No.  
75C638

MESSERS. GRENITO, PETERSON,  
TRAPANI, WALKER, ROSE, YACHNIN and  
WEXNER, Constituting the Board of  
Zoning Appeals of the Town of  
Hempstead, State of New York, and  
THE FOURTH OCEAN PUTNAM CORPORATION,  
and the TOWN OF HEMPSTEAD,

Defendants.

-----X

A motion having been regularly made by the defendants  
Messers. Grenito, Peterson, Trapani, Walker, Rose, Yachnin and  
Wexner, constituting the Board of Zoning Appeals of the Town of  
Hempstead, State of New York, and the Town of Hempstead herein  
for summary judgment in the defendants' favor dismissing the  
action on the ground that there is no genuine issue as to any  
material fact and that said defendants are entitled to judgment  
as a matter of law;

Now on considering the affidavits of William L. Williams,  
Deputy Commissioner of the Department of Buildings of the Town  
of Hempstead, duly verified the 21st day of May, 1976; the

affirmation of Jeffrey L. Stadler, Esq., Deputy Town Attorney of the Town of Hempstead, dated May 21, 1976, submitted in support of the motion and after hearing the plaintiffs pro se in opposition thereto and, a review of the exhibits submitted in support of the motion, and in opposition to the motion, and due deliberation having been had and the decision of the Court having been filed it is

ORDERED, that said motion be and the same is hereby granted, and that judgment be entered herein in favor of all of the defendants dismissing this action in all respects without costs or disbursements.

Dated: September , 1976

---

United States District Judge

Adopted: August 10, 1971

Mr. J. Bennett offered the following resolution and moved its adoption:

RESOLUTION AUTHORIZING THE PREPARATION AND  
SUBMISSION OF AN APPLICATION FOR PARTICIPATION  
BY THE TOWN OF HEMPSTEAD IN THE EMERGENCY  
FLOOD INSURANCE PROGRAM AS ESTABLISHED BY THE  
EMERGENCY FLOOD INSURANCE ACT OF 1968 AS  
AMENDED.

WHEREAS, certain areas of the Town of Hempstead are subject to periodic flooding from the Atlantic Ocean and waters tributary thereto, causing serious damages to residential properties within these areas; and

WHEREAS, relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968 as amended; and

WHEREAS, it is the intention of the Town Board of the Town of Hempstead to comply with land use and management criteria regulations as required in said act within the unincorporated areas of the Town of Hempstead subject to its jurisdiction in respect to land use and management criteria regulations; and

WHEREAS, it is also the intent of this Town Board to recognize and duly evaluate flood hazards in all official actions relating to land use in the flood plain areas having special flood hazards under its jurisdiction; and

WHEREAS, this Town Board is authorized to adopt land use and control measures by State enabling legislation, particularly Town Law Article 16, and more particularly Sections 261, 262 and 263, and the Nassau County Civil Divisions Act, particularly Article 1, Section 222, Article 3, Section 245, Article 8, Section 300; and

WHEREAS, this Town Board has heretofore enacted provisions constituting land use and control measures inclusive of the Building Zone Ordinance of the Town of Hempstead and Chapters 58, 86, 154, 168 and 181 of the Code of the Town of Hempstead.

**NOW, THEREFORE, BE IT**

RESOLVED, that this Town Board hereby assures the Federal Insurance Administration that it will take legislative action as follows:

1) Enact by December 31, 1971, and maintain in force for those areas, adequate land use and control measures with effective enforcement provisions consistent with the criteria set forth in Subpart A of Section 1910 of the National Flood Insurance Regulations; and

2) If necessary, seek State enabling legislation conferring authority to enact land use and control measures designed to reduce the exposure of property to flood loss; and

3) Take such other official action as may be reasonably necessary to carry out the objectives of the program provided, however, that nothing herein contained shall be deemed an expression of intent by the Town of Hempstead, nor an agreement to make

APPROVED AS TO CONTENT

DATE: Aug. 2, 1971  
Walter G. Michaelis  
COMMISSIONER - DEPARTMENT OF  
PLANNING & ECONOMIC DEVELOPMENT

**Approved as to form**

~~Deputy Town Attorney~~  
Dated 7-3-1971

— — — — —

44 OF NEWCASTLE  
ICE OF TOWN CLERK

any expenditure for physical improvements to property or the construction of any facility involving expenditure of funds by the Town. Subject to such exception, such actions will include but not be limited to:

a) Assisting the Federal Insurance Administrator, at his request, in delineating the limits of the flood plain having special flood hazard on available local maps of sufficient scale to identify the location of the building sites.

b) After flood insurance is made available, furnishing representatives of the National Flood Insurers Association (also appropriate Federal or State agencies, upon request) information concerning new or substantially improved structures within the area of special flood hazard. This information will include floor elevations and, if there is a basement, the distance between the first floor and the bottom of the lowest opening where water flowing on the ground will enter.

c) Cooperating with Federal, State and local agencies which undertake to study, survey, map and identify flood-prone areas as well as cooperating with neighboring jurisdictions with respect to adjoining flood plains in order to prevent aggravation of the flooding problem.

d) Providing the name of the individual and the office that will be responsible for furnishing the first floor elevation information.

BE IT FURTHER RESOLVED, that this Town Board hereby appoints the Presiding Supervisor, Francis T. Purcell, with the responsibility, authority and means to implement the commitment made herein.

The foregoing resolution was seconded by Mr. Muscarolla and adopted upon roll call as follows:

AYES: EIGHT (8)

NOMES: NONE (0)

STATE OF NEW YORK }  
COUNTY OF NASSAU } ss:  
TOWN OF HEMPSTEAD }

I do hereby certify that I have compared the annexed copy of Resolution No. 2092-1971  
(2 pages) Adopted by the Town Board on August 10, 1971  
with the original, on file in the office of the Town Clerk of the Town of Hempstead, and that the same  
is a true and correct copy of said original and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the  
Town of Hempstead on this day of December 23, 1975.

NATHAN L. H. BENNETT, Town Clerk

*[Signature]*  
Deputy Town Clerk

md

Hon. Jack Weinstein

-3-

June 2, 1976

2. Has the Secretary of Hud complied with the Congressional directive to give the highest practicable priority to the identification and mapping of flood-risk zones. Sec. 204 (c) of The Flood Disaster Protection Act of 1973, Section 1360 of The National Flood Insurance Act of 1968 amended. "The Secretary is directed to accelerate the identification of risk zones within flood prone and mud slide-prone areas, as provided by subsection (a) (2) of this section in order to make known the degree of hazard within such zone at the earliest possible date. To accomplish this objective, the Secretary is authorized, without regard to section 3648 and 3709 of the Revised Statutes, as amended (31 U.S.C. 529 and 41 U.S.C.S.) to make grants, provide technical agreements, or other transactions, on such terms as he may deem appropriate, or consent to modifications thereof, and to make advance or progress payments in connection therewith . . . . "(c) The Secretary of Defense (through the Army Corps of Engineers . . . . ).

3. Has the Secretary of Defense complied with the congressional directive to give its information to Hud. (either the Secretary of Defense has given its information to Hud and Hud hasn't used it, or it has not given it to Hud. The Secretary of Defense has had this information about high risk areas since 1955. "and the heads of all other Federal Agencies engaged in the identification or delineation of flood-risk zones within the several states - shall in consultation with the Secretary, give the highest practicable priority in the allocation of available manpower and other available resources (emphasis supplied) to the identification and mapping of flood hazard areas and flood risk zones (emphasis supplied) in order to assist the Secretary to meet the deadline established by this section." As amended Pub. L. 93-234, Title 11 204 Dec. 31, 1973, 87 Stat 983.

I ask this Federal Court for strict scrutiny and interpretation of the statute in order to determine whether the Secretaries of Defense and Hud have fully complied with the declared purposes, mandates and directives of Congress in the enactment of the Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973.

In asking for what appears at first glance to be merely a "zoning case", I am actually asking to be heard as a United States citizen protecting her constitutional rights to life under the 5th and 14th Amendments. In the case of Lerner v. Town of Islip (Aug. 10, 1967) the District Court, Weinstein, J., this was "an action by property owner for judgment declaring that applicable Town zoning ordinance violated her rights under the 5th and 14th

1  
2 UNITED STATES DISTRICT COURT

3 EASTERN DISTRICT OF NEW YORK

4 . . . . . x

5 RUTH RADOW and SEYMOUR RADOW,

6 Plaintiffs, :

7 - against - :

8 MESSRS. GRENITO, PETERSON, TRAPANT, :  
9 WALKER, ROSE YACHNIN and WEXNER, :  
Constituting the Board of Zoning :  
Appeals of the Town of Hempstead, :  
State of New York, and THE FOURTH :  
10 OCEAN PUTNAM CORPORATION, and :  
THE TOWN OF HEMPSTEAD, :

75-C-638

11  
12 Defendants. :

13 . . . . . x

14

15 United States Courthouse  
Brooklyn, New York  
16 SEPT 28, 1976

17

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25

I hereby certify that the foregoing is a  
true and accurate transcription of the  
graphic notes in this record.

*Daniel D. Simon*  
Official Court Reporter  
U.S. District Court for the  
Eastern District of N.Y.

DANIEL D. SIMON  
ACTING OFFICIAL COURT REPORTER

1 THE COURT: To the inner what?

2 MR. RADOW: To the mainland.

3 THE COURT: Yes, the mainland, and inland water-  
4 ways. It goes all the way down to Florida behind  
5 barrier beaches. They're all subject to flooding.  
6 And they are subject to hurricane devastation. The  
7 Court takes judicial notes of the fact that they have  
8 been devastated over the last forty years to my  
9 knowledge. As you know, there have been breaks in the  
10 barrier beaches. I am familiar with this area. The  
11 bridges are, as you say, connecting the low lying  
12 areas, and they will be dangerous whenever there are  
13 hurricanes. And the more people you put into the  
14 area the more people you have to evacuate. That's  
15 all very clear. That doesn't give me the authority  
16 to prevent this kind of building.

17  
18 (Continued on the following page)

19

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22

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25

1 Now, you can take an appeal if you want to the  
2 Court of Appeals. There is a procedure in Civil Cases  
3 so that you may go before somebody who will discuss it  
4 with you and assist you in proceeding further. If  
5 you have any questions about how you proceed, the Clerk  
6 of the Court of Appeals is over in Foley Square in  
7 the Federal Building. You can't do anything until  
8 after the judgment is entered. I will enter it  
9 this week. You will get a copy of it from your  
10 opponent. He'll order the minutes and file them, and  
11 if you want to, you can take an appeal and go up.  
12 We will see what happens. You may be right. I will  
13 be happy to have you. I find these questions interesting.  
14 I will be happy to try this case.

15 MRS. RUTH RADOW: Fine. I would be happy to  
16 see you again.

17 THE COURT: Maybe I will see you again with all  
18 the experts. It will be very productive for both of  
19 us. I enjoy these cases.

20 Summary judgment on behalf of all defendants  
21 against all plaintiffs.

22 \* \* \* \* \*

23

24

25

# B16 Sees '100%' Chance Of Awful Hurricane

DAILY NEWS, THURSDAY, JUNE 17, 1976

'NL

By GROVER RYDER

The probability of a devastating hurricane hitting Long Island between now and October "is 100%," Harold Gibson, chief meteorologist for the New York area office of the National Weather Service, warned yesterday. Gibson made his dire prediction at a seminar held at the County Executive Building in Mineola.

The meteorologist also warned that because of Nassau's vulnerable position there "in all likelihood will be a short warning time, from six to 10 hours, and the first warning could be at midnight, when everyone is asleep, as well as it could be at noon."

"It would give us only a little time for the large-scale evacuation in case of a major or even a moderate storm," he added.

#### Cites Long Beach

About 60 federal, county, town and village officials attended the meeting, chaired by Deputy County Executive Joseph Driscoll Jr.

Gibson stressed the possible devastation to exposed areas such as Long Beach if a "storm surge" or tidal wave, which centers around the eye of a hurricane, should hit. He pointed out that the last time that this happened was in 1821, "when only a few people lived on the Island."

Gibson repeatedly stressed the danger to Long Beach and through the use of slides pointed out that there are only three bridges leading out of the city, which he called inadequate.

"It is an area of 50,000 people and those who are not evacuated would not survive," Gibson said.

#### Evacuation Map

Gibson said that even in the event of a moderate storm with landfall directly in Nassau" water would cover an area from Sunrise Highway southward. "The potential for disaster is tremendous," he said.

Pointing to a hurricane evacu-

ation map for Nassau, Gibson remarked, with some emphasis: "Our building codes were made for wind, not for storm surge."

"Most of us believe that we have been through a hurricane, but in actuality we have only been through the fringes," he said.

A storm surge would carry with it a wall of water from eight to 15 feet high, the meteorologist said, adding that he did not believe one "could ride out" a hurricane in the upper floors doubted that the building could withstand the surge.

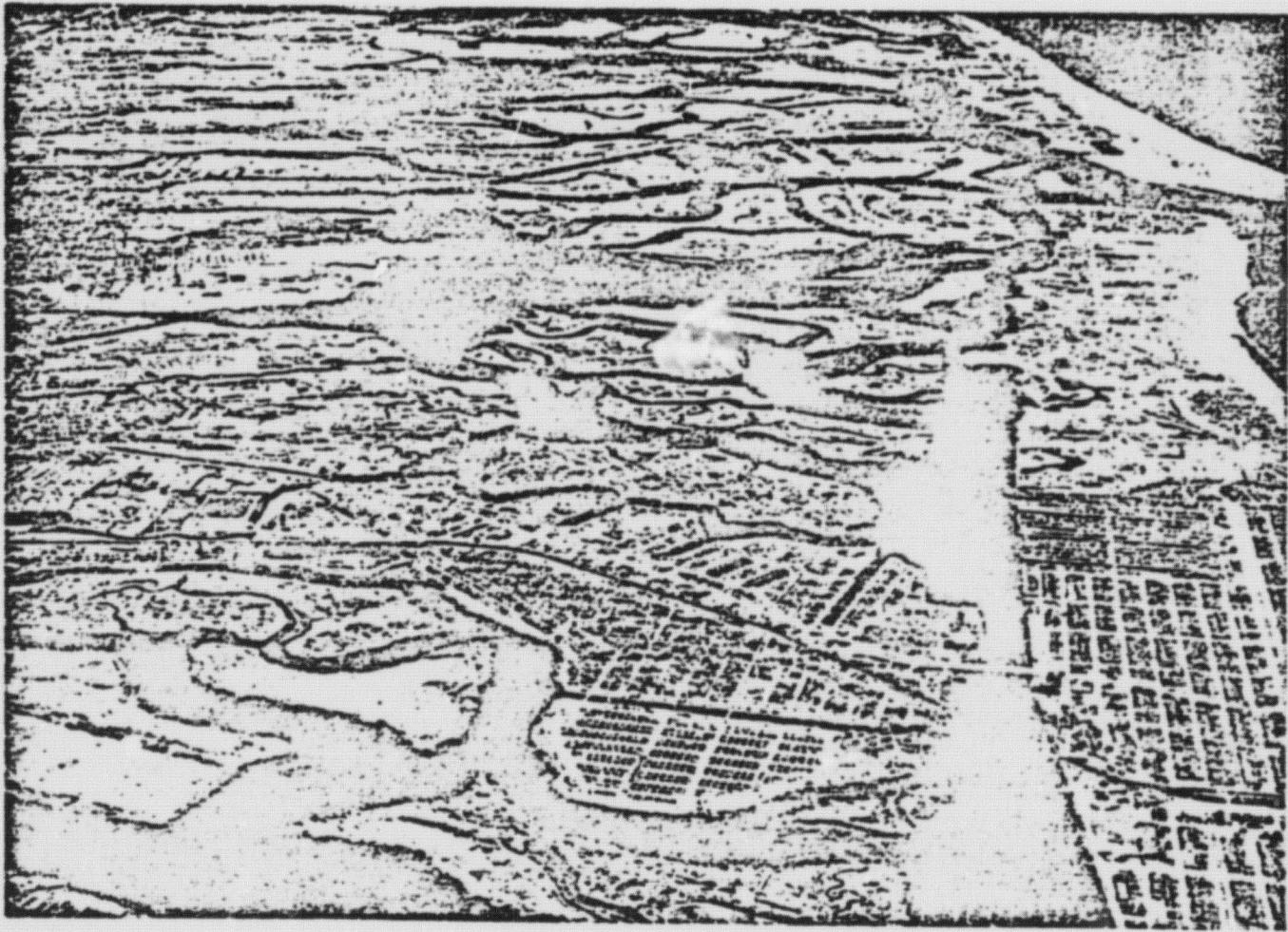
Broker's  
Window  
a full view of  
the best real  
estate buys  
Tomorrow  
and Sunday  
NEWS  
CLASSIFIED

(4) (3) P.30-40

EXHIBIT P  
Ruth Stella Radew

# TIDAL FLOOD PLAIN INFORMATION

## SOUTH SHORE OF NASSAU COUNTY LONG ISLAND, NEW YORK



PREPARED BY  
DEPARTMENT OF THE ARMY, NEW YORK DISTRICT, CORPS OF ENGINEERS  
FOR  
COUNTY OF NASSAU PLANNING COMMISSION

JUNE 1971

**STANDARD PROJECT TIDAL FLOOD.** The Standard Project Tide is defined as the highest tide that may be expected with a storm resulting from a severe combination of meteorologic events considered reasonably characteristic of the region involved. Neither extremely unusual meteorologic conditions nor rare combinations of these conditions are considered in the determination of the Standard Project Tide. Only in rare instances has a specific area experienced the highest tide that is likely to occur. Severe as the maximum known tide may have been at any given location, a higher tide can and probably will occur. The Corps of Engineers, in cooperation with the Weather Bureau, has made broad and comprehensive studies and investigations based on the records of experienced storms and tides and has evolved generalized procedures for estimating the potential of storms and the resulting tidal stages. These procedures have been used in determining the Standard Project Tidal Flood.

A Standard Project Tide has been developed for the Sandy Hook, New Jersey, and the Fort Hamilton-Fort Wadsworth, New York, vicinity which is applicable to the south shore of Nassau County, Long Island. The Standard Project Tide as caused by the Standard Project Hurricane was based on the transposition of the meteorological parameters of the September 1944 Hurricane to a path critical to the New York Harbor area. The meteorological parameters were a central pressure between 27.55 and 27.95 inches of mercury with a normal pressure of 30.12 inches of mercury, a forward velocity of 40 knots, a radius of maximum winds of 30 nautical miles, and a maximum sustained wind speed of 116 miles per hour. The passage of such a storm would produce a tidal surge of 12.3 feet. When this surge is assumed to occur coincidental with a mean tide the resulting Standard Project Tide for the south shore of Nassau County is 12.3 feet, mean sea

level. Although this tide is appreciably higher than any experienced in the area, it is not to be confused with the still higher "Maximum Probable Tide".

It is not practical to assign a frequency to the Standard Project Tide. The occurrence of such a tide would be very infrequent; however, it could occur in any year.

Tides higher than the Standard Project Tide are possible although the combination of physical factors that would be necessary to produce such tides would seldom occur. The consideration of tides exceeding that of the Standard Project Tide may be more important in some special problem areas than in others and should not be overlooked in the study of any problem involving tidal flooding.

Standard Project Tide levels throughout the south shore of Nassau County are shown in Table 2, page 24.

13  
"BROAD"  
DISTRICT COURT

12  
P. 2  
"impermeable P.V.C."  
in DISTRICT CO. OF  
to GREAT LAKES

see p. 17  
see Congressional  
Act "expressly  
directing Sec'y of  
Hil. to" cf (concern)  
with Nat'l. Act's

17  
see "Statutory  
P.U.Y." of HUD

P. 20  
see "Statutory  
objection"  
(of Congress)

P. 21  
see "Statutory  
powers" of HUD

FED.  
here US Supreme  
Court has "determined"

a Federal DISTRICT  
COURT "HAS"  
"PRECEDENT" "to"  
"power" to "order" "HUD"

28

"to utilize its  
powers" to "comply  
with a Congressional Act"  
"to discharge its  
statutory power to  
achieve its  
statutory

"Slip opinion"  
Case No. 74-1047, Apr 20, 1976  
(refer to page number  
in "slip opinion")

R-75

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Lumber Co., 200 U.S. 231, 237.

## SUPREME COURT OF THE UNITED STATES

SYLLABUS  
NOT "OPINION" OR  
"DECISION"  
(See P. 1)

HILLS, SECRETARY OF HOUSING AND URBAN  
DEVELOPMENT v. GAUTREAUX ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE SEVENTH CIRCUIT

(74-1047) Argued January 20, 1976 — Decided April 20, 1976

Respondents, Negro tenants in or applicants for public housing in Chicago, brought separate class actions against the Chicago Housing Authority (CHA) and the Department of Housing and Urban Development (HUD), alleging that CHA had deliberately selected family public housing sites in Chicago to "avoid the placement of Negro families in white neighborhoods" in violation of federal statutes and the Fourteenth Amendment, and that HUD had assisted in that policy by providing financial assistance and other support for CHA's discriminatory housing projects. The District Court on the basis of the evidence entered summary judgment against CHA, which was ordered to take remedial action. The court then granted a motion to dismiss the HUD action, which meanwhile had been held in abeyance. The Court of Appeals, reversed, having found that HUD had committed constitutional and statutory violations by sanctioning and assisting CHA's discriminatory program. The District Court thereafter consolidated the CHA and HUD cases and, having rejected respondents' motion to consider metropolitan relief, adopted petitioner's proposed order for corrective action in Chicago. The Court of Appeals reversed and remanded the case "for additional evidence and for further consideration of metropolitan relief." Held: A metropolitan area remedy in this case is not impermissible as a matter of law. *Milliken v. Bradley*, 418 U. S. 717, distinguished. Pp. 11-21.

(a) A remedial order against HUD affecting its conduct in the area beyond Chicago's geographic boundaries but within the housing market relevant to the respondents' housing options is warranted here because HUD, in contrast to the suburban school

See p. 14  
re powers of  
a "CITY HOUSING  
AUTHORITY" under  
Illinois Statute  
C.P. STATE STATUTE  
N.Y. ZONING ENCLAVE  
STATUTE (See 263)  
DOES NOT CONFLICT WITH  
FEDERAL LAWS  
N. B.

Citizens had  
alleged  
Violation of  
federal  
statutes and  
14th Amendment  
(particularly what  
have done)

WB  
a Federal DISTRICT  
COURT "HAS"  
"PRECEDENT" "to"  
"utilize its  
powers" to "comply  
with a Congressional Act"  
"to discharge its  
statutory power to  
achieve its  
statutory

## Syllabus

districts in *Milliken*, committed violations of the Constitution and federal statutes. *Milliken* imposes no *per se* rule that federal courts lack authority to order corrective action beyond the municipal boundaries where the violations occurred. Pp. 12-15.

(b) The order affecting HUD's conduct beyond Chicago's boundaries would not impermissibly interfere with local governments and suburban housing authorities that were not implicated in HUD's unconstitutional conduct. Under the § 8 Lower-Income Housing assistance program of the Community Development Act of 1974 HUD may contract directly with private owners and developers to make leased housing units available to eligible lower-income persons, with local governmental units retaining the right to comment on specific proposals to reject certain programs that are inconsistent with their approved housing assistance plans, and to require that zoning and other land use restrictions be observed by builders. Pp. 15-21.

503 F. 2d 930, affirmed.

STEWART, J., delivered the opinion of the Court in which all Members joined, except STEVENS, J., who took no part in the consideration or decision of the case. MARSHALL, J., filed a concurring statement, in which BRENNAN and WHITE, JJ., joined.

*N.B.*

This Stewart opinion upholds local zoning restrictions (see p. 31, line 3) upon project utilization of local power to regulate land under enabling acts! (Section 361, 26<sup>2</sup>, 26<sup>3</sup> NY TOWN LAW)

Given of Hemp has the power to create a "HIGH FLOOD HAZARD DISTRICT" along exposed oceanfront "in order to promote the health, safety and welfare of the community" to proper and constitutional use of the state's "POLICE POWER".

HUD's (proper) "conduct" under general law since it should have "interfered" with local authority in accordance with congressional objective or to reduce or avoid losses from floods

N.Y STATE "objectives" under Section 263  
N.Y Town Law, the same as Congress's (i.e., to "secure safety from flood") proper use of state's "police power"